

Federal Communications Commission

DA 00-2105

Before the  
Federal Communications Commission  
Washington, D.C. 20554

SEP 19 8 11 AM '00

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. <u>00-56</u>
Table of Allotments,	)	RM-9839
FM Broadcast Stations.	)	RM-9905
(Eastman, Vienna, Ellaville and Byromville,	)	RM-9906
Georgia) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: September 6, 2000

Released: September 15, 2000

By the Chief, Allocations Branch:

1. At the request of Clyde and Connie Lee Scott, d/b/a EME Communications ("EME Communications"), the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 5610 (2000), proposing the allotment of Channel 221A to Eastman, Georgia, as the community's second local FM and third local aural service. Comments and counterproposals were filed by: (1) Morgan Dowdy ("Dowdy"), requesting the allotment of Channel 221A to Vienna, Georgia; (2) Radio Center Corp. ("Radio Center"), requesting the allotment of Channel 221A to Ellaville, Georgia; and (3) Murphy Broadcasting ("Murphy"), requesting the allotment of Channel 221A to Byromville, Georgia.<sup>2</sup>

2. Dowdy requests the allotment of Channel 221A to Vienna, Georgia, as the community's first local FM and second local aural service. He states that Vienna is an incorporated town with a 1990 U.S. Census population of 2,608 people. He notes that AM Station WWWN is licensed to Vienna and operates with a power of 1000 watts daytime and 23 watts at night. However, he contends that the station must be considered as a daytime-only station since it operates with such "meager" nighttime power. Therefore, he states that the public interest would be better served by the allotment of a first local nighttime and first competitive aural service at Vienna than by allotting a third local aural service to Eastman. Dowdy states that he will apply for Channel 221A, if allotted to Vienna.

3. Radio Center proposes the allotment of Channel 221A to Ellaville, Georgia, as the

<sup>1</sup> The communities of Vienna, Ellaville and Byromville have been added to the caption.

<sup>2</sup> Public Notice of the Dowdy and Radio Center counterproposals was given on June 20, 2000, Report No. 2419. The Murphy counterproposal, however, was found to be unacceptable for consideration herein and thus not put on Public Notice. Murphy filed his counterproposal with the Commission but failed to comply with the Commission's requirements that a copy of such pleadings be served on the petitioner. Section 1.420(a) of the Commission's Rules states that all comments must be served on the petitioner and paragraph 7 of the Notice of Proposed Rule Making additionally states that if the pleading is not served on the petitioner, it would be considered an ex parte contact and not considered in this proceeding. Therefore, Murphy's counterproposal to allot Channel 221A to Byromville, Georgia, will not be considered and will be dismissed herein.

community's first local aural service. It states that Ellaville, with a 1990 U.S. Census population of 1,726 people, is the seat of Schley County (population 3,588 people) and is governed by an elected mayor and five member council. Radio Center states that an Ellaville station, operating with maximum Class A powers, could provide service to 42,028 people with an area of 2,465 square kilometers. It also submits that the provision of a first local aural service at Ellaville would better serve the public interest than would the provision of a third such service at Eastman, citing the allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).<sup>3</sup> Radio Center states that it will apply for Channel 221A if allotted to Ellaville. In reply comments, it states that conformance with Commission's policy and paragraph 2 of the Appendix to the Notice requires that EME's proposal to allot Channel 221A to Eastman be dismissed since it failed to file the required comments reiterating its intention to apply for the channel, if allotted. As to a comparison of the two remaining proposals, it argues that the allotment of Channel 221A at Ellaville must be preferred over the requested allotment at Vienna since Vienna already enjoys fulltime local aural service from AM Station WWCN.

4. As an initial matter, we will dismiss EME Communications' request to allot Channel 221A to Eastman. The Notice states that a showing of continuing interest is required before a channel will be allotted and neither EME Communications nor any other party filed comments expressing such an intention with regard to the Eastman allotment. Further, it is the Commission's general policy to refrain from making allotments to a community absent such a continuing expression of interest. See Murray, Kentucky, 3 FCC Rcd 3016 (1988) and Pine, Arizona, 3 FCC Rcd 1010 (1988).

5. After careful consideration of the record before us, we find that both Vienna and Ellaville are deserving of FM allotments. Conflicting proposals are generally considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, supra. However, in this case, a staff engineering study has found that an alternate channel, Channel 290A, is available for allotment at Ellaville. Therefore, we need not compare the needs of the two communities. Channel 290A can be allotted to Ellaville in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) southeast to avoid a short-spacing to Station WSTH-FM, Channel 291C1, Alexander, Alabama.<sup>4</sup> Channel 221A can be allotted to Vienna in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) north to avoid a short-spacing to Station WDDQ, Channel 221A, Adel, Georgia.<sup>5</sup>

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 30, 2000, the FM Table of

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<sup>3</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight.

<sup>4</sup> The coordinates for Channel 290A at Ellaville are 32-11-55 North Latitude and 84-13-15 West Longitude.

<sup>5</sup> The coordinates for Channel 221A at Vienna are 32-06-55 North Latitude and 83-47-57 West Longitude.

Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Ellaville, Georgia	290A
Vienna, Georgia	221A

7. A filing window for Channel 290A at Ellaville and Channel 221A at Vienna will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

8. IT IS FURTHER ORDERED, That the petition for rule making filed by Clyde and Connie Lee Scott, d/b/a EME Communications, to allot Channel 221A to Eastman, Georgia (RM-9839), and the counterproposal filed by Murphy Broadcasting to allot Channel 221A to Byromville, Georgia, ARE DISMISSED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau